

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Eligibility for the Specialized Mobile Radio
Services and Radio Services in the 220-222
MHz Band and Use of Radio Dispatch
Communications

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GN Docket No. 94-90

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OPPOSITION OF GTE SERVICE CORPORATION

GTE Service Corporation ("GTE"), on behalf of its telephone and wireless companies, herewith submits its opposition to the above-captioned petition for partial reconsideration by the American Mobile Telecommunications Association, Inc. ("AMTA").¹ AMTA seeks reconsideration of the FCC's conclusion in the *Report and Order* in this docket² that pro-competitive policies dictate that common carrier radio licensees should be permitted to offer dispatch services using their existing spectrum. AMTA further argues that any spectrum derived from the deployment of capacity-enhancing technologies by common carrier radio licensees should be opened for general licensing. As discussed below, these requests are unsupported by law or policy. Accordingly, the AMTA Petition should be dismissed.

¹ Request for Partial Reconsideration and for Clarification of the American Mobile Telecommunications Association, Inc., GN Docket No. 94-90 (filed Apr. 24, 1995) ("AMTA Petition").

² *Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Band and Use of Radio Dispatch Communications*, GN Docket No. 94-90 (rel. Mar. 7, 1995) ("*Report and Order*").

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ARGUMENT

In the *Omnibus Budget Reconciliation Act of 1993*, Congress divided all land mobile services into new Commercial Mobile Radio Services ("CMRS") and Private Land Mobile Radio Services ("PMRS") classifications. Congress further mandated regulatory parity among all similarly situated CMRS providers. Among other things, the legislation authorized the Commission to "terminate, in whole or in part, the [dispatch] prohibition [on common carriers] if the Commission determines that such termination will serve the public interest."³ Earlier this year, in this proceeding and subject to full public notice and comment, the Commission in fact determined that the dispatch prohibition on land mobile common carriers disserved the public interest and allowed all CMRS operators to offer dispatch services equally. Specifically, the Commission found that "repeal of the dispatch ban will enhance competition and thereby provide consumers with expanded choice and lower prices," and that "retention of the ban is inconsistent with our efforts to establish a regulatory framework which provides similar services with symmetrical requirements."⁴

AMTA believes the prohibition on common carrier provision of dispatch should be reinstated because such carriers have generally "been free to provide dispatch service on any available Part 90 spectrum."⁵ This utterly ignores that the ban prohibited common carriers from integrating the offering of dispatch and non-dispatch services using the same spectrum, a

³ *Omnibus Budget Reconciliation Act of 1993*, § 6002, Pub. L. No. 103-66, 107 Stat. 394 (1993).

⁴ *First Report and Order* at ¶29.

⁵ AMTA Petition at 4.

valuable benefit that only non-common carrier licensees previously enjoyed. As the Commission's order notes, benefits of eliminating the prohibition include "satisfy[ing] consumers' growing demand for *integrated* services" and "lower[ing] the cost of multifunction equipment," both of which rely, in large part, on the ability to offer both dispatch and non-dispatch services using the same spectrum.⁶

AMTA's argument that spectrum capacity utilized by common carrier licensees for the provision of dispatch service is "excess" or "superfluous" and instead should be made available for all potential applicants is similarly unavailing. First, the argument fails to consider that one of the primary justifications for eliminating the ban is to allow common carrier licensees to offer *integrated* services. Second, the argument ignores the Commission's prior rejection of similar arguments that secondary uses should be opened up to new applicants. For example, in the FM SCA context, the Commission stated that it "regards FM subcarrier use as a secondary privilege that runs with the primary FM station license . . . [which] is conferred on the primary station licensee only."⁷ Finally, the argument does not even begin to address the technical impossibility or practical logistics of attempting to coordinate the use of spectrum between two different licensees.

⁶ *First Report and Order* at ¶30 (emphasis added).

⁷ *Amendment of Parts 2 and 73 of the Commission's Rules Concerning Use of Subsidiary Communications Authorizations*, 53 Rad. Reg. 2d (P & F) 1519, 1526 (1983), *rev'd in part, California v. FCC*, 60 Rad. Reg. 2d (P & F) 1720 (1986) (reversing Commission preemption of state regulation of common carrier land mobile radio services provided on FM SCAs).

As a final matter, AMTA's plea to defer the effective date of the dispatch ban elimination should be rejected. The transition period for reclassified private radio licensees was intended to provide sufficient time for these entities to adapt their operations to common carrier regulation. The intent was not to provide reclassified licensees with a limited monopoly in the provision of dispatch services. The benefits of full and fair competition must not be delayed.

CONCLUSION

Under the circumstances, the AMTA Petition should be rejected. The Commission's decision to eliminate the dispatch prohibition was fully supported by the record and will provide substantial benefits for the public through full, fair, and open competition. The Commission's decision should not be revisited simply because AMTA, the trade association representing commercial dispatch entities, "is not persuaded" that the ban should be eliminated. Similarly, there is no record basis either for opening up for general application filing spectrum

used by common carrier licensees to provide dispatch services or for granting reclassified private radio licensees a temporal enclave free of competition.

Respectfully submitted,

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its telephone and wireless companies

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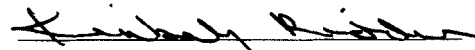
Dated: May 24, 1995

CERTIFICATE OF SERVICE

I, Kimberly Riddick, on this 24th day of May, 1995, hereby certify that I caused copies of the foregoing Opposition to be served, first-class mail, postage prepaid, upon the following:

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